

Staff Report of Public Comment Proceeding

IANA Naming Function Agreement																			
Publication Date:	15 September 2016																		
Prepared By:	ICANN Staff																		
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Staff Contact:	Trang Nguyen	Email:	trang.nguyen@icann.org																
Section I: General Overview and Next Steps																			
<p>In the ICG proposal, the naming community recommended that a new legal entity referred to as PTI be formed, and an agreement put in place between ICANN and PTI through which PTI will perform the IANA naming function. The ICG Proposal included a draft term sheet for that contract, provided by the CWG-Stewardship (the group providing a response on behalf of the domain names community), as well as a listing of all provisions it recommended be carried over from ICANN's IANA Functions Contract with NTIA. This term sheet and carry-over identification were used by ICANN as a base to draft the proposed Naming Function Agreement between ICANN and PTI.</p> <p>The proposed Naming Function Agreement was published for a 30-day public comment from 10 August – 09 September to allow any interested party to review and provide feedback. This report summarizes and analyzes the comments. ICANN thanks all of the commenters for their thoughtful comments and for participating in ICANN's processes. This report along with the final Agreement will be presented to the ICANN and PTI Boards for their approval.</p>																			
Section II: Contributors																			
<p><i>At the time this report was prepared, a total of eight (8) community submissions had been posted to the forum. The contributors are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.</i></p>																			
Name	Submitted by	Initials																	
Business Constituency	Steve DelBianco	BC																	
Council of European National Top-Level Domain Registries	Peter Van Roste	CENTR																	
Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions	Jonathan Robinson	CWG-Stewardship																	
Asia Pacific Top Level Domain Association	Leonid Todorov	APTLD																	
Country Code Names Supporting Organization Council	Bart Boswinkel	ccNSO Council																	
Internet Services Providers & Connectivity	Chantelle Doerksen	ISPCP																	

Providers Constituency		
At-Large Advisory Committee	Alan Greenberg	ALAC
Centre for Communication Governance at National Law	Aarti Bhavana	CCG

Section III: Summary of Comments

General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

ICANN thanks the BC, CWG-Stewardship, APTLD, ccNSO, ISPCP, ALAC, and CCG for participating in the ICANN public comment process and for submitting comments on the Naming Function Agreement.

General Comments

CENTR expressed support for the comments made by Paul Kane, Becky Burr, and Stephen Deerhake in the CWG-Stewardship mail list, and ICANN’s responses as it relates to section 1.1, 4.10.a, 5.3.a, 6.1.c, and 7.1 of the Agreement. CENTR further commented on a few specific issues including noting that the name of the Agreement does not match its reference in the revised ICANN Bylaws and suggested changing the name of the Agreement to “IANA Naming Function Contract” for consistency with the new ICANN Bylaws Section 16.3. Other comments from CENTR are reflected below.

The CWG-Stewardship prepared a redline of the Agreement based on a series of calls with its members, input from its external legal counsel, and discussion with ICANN. The CWG-Stewardship asked that the comments reflected in the redline be addressed. The CWG-Stewardship suggested edits to sections 1.1, 3.1, 3.2, 4.1, 4.4, 4.5, 4.6, 4.7, 4.10, 5.3, 6.1, 7.1, 7.2, 7.3, 8.1, 9.2, 9.4, 10.1, 11.4, 12.1, 12.3, 14.2, 14.3, 14.8, and Annex A of the Agreement. Please refer to the [redline](#) submitted by the CWG-Stewardship for the suggested edits.

The ccNSO Council acknowledged the participation and contributions of representatives of the ccTLD community in CWG-Stewardship discussions, and supported the comments made and language agreed to via these discussions, particularly as they relate to Sections 1.1 and 4.7 of the Agreement.

Several organizations expressed support for the Agreement, including the ALAC, BC, and ISPCP.

The CCG commented that the IANA Stewardship Transition Coordination Group (ICG) Proposal stated that there would be a standing committee that would advise the ICANN Board regarding operational and architectural changes to the root zone; however, there is no mention of this committee in the Agreement.

4.4 Performance of IANA Naming Function

The CCG commented that the ICG proposal “takes into account the possibility that performance of the non-names IANA functions may be subcontracted to PTI” and that “[i]n this eventuality, it states that these new agreements cannot override Part 1 (Domain Names) of the ICG Proposal (and by extension, the Agreement).” The CCG further noted that this is not reflected in the Agreement.

Section 4.5: Separation of Policy Development and Operational Roles

The BC expressed concerns that “without clear and unequivocal language that limits the PTI to the operational aspects of the IANA functions, there is a risk that the PTI will become a venue to re-litigate upstream policy decisions.” The BC suggested at minimum deleting the language in section 4.5.iii, and preferred deleting language in 4.5.i, 4.5.ii, and 4.5.iii. Further, the BC recommended that the language of section 5.3.b is also reflected in section 4.5 to further emphasize separation of policy and operational roles.

Section 4.6: User Instructions

CENTR suggested that the Agreement should include an obligation for PTI to set up a coordination process with its customers to “define, review and change technical requirements.”

Section 4.7: Responsibility and Respect for Stakeholders

CENTR recommended adding to the Agreement a reference to RFC 1591 as it “is the basis for delegation and redelegation of ccTLDs” and supports the text agreed to with the CWG-Stewardship. CENTR further commented that it is important for the Agreement to make clear that PTI’s role “is limited to checking that due process has been followed and documented and that the action in PTI is within the relevant policy framework for the registry concerned.” CENTR also noted that “ccTLDs that are not member of the ccNSO cannot be bound by ccNSO agreed policies” and asked for clarification of this in the Agreement as well as a reference to it in the ICANN Bylaws.

The APTLD commented that the language in Section 4.7 elevates the GAC Principles to policy status when they have not gone through the policy development process.

Section 4.9 General Manager; Key Personnel

The ISPCP expressed concerns that “requiring specific staff with specific skills in specific titles seems to eliminate flexibility for the management of the naming function to meet future needs.”

The CCG commented that the CWG-Stewardship Proposal specified “Qualified Programme Manager, IANA Functions Programme Manager, and IANA Function Liaison for Root Zone Management” as key personnel and noted that the Agreement reflects “General Manager, Director of Security, and Conflict of Interest Officer” as key personnel. The CCG further commented that it is not clear how the roles recommended in the CWG-Stewardship Proposal are mapped to the roles in the Agreement. The CCG also commented that the Agreement is silent about the procedure for appointment of key personnel and suggested that the

qualifications listed in the PTI Bylaws for Directors be applied to “the appointment of key personnel as well to avoid conflicts of interest.”

Section 5.3: Performance Exclusions

CENTR suggested that Section 5.3(a) be clarified to avoid confusion within the current wording, which can be read to suggest that ICANN is assuming the authorization role previously held by NTIA as it relates to root zone management.

APTLD commented that Section 5.3.a “effectively prohibits the Contractor to “...make modifications, additions or deletions to the root zone file or associated information”” and that “[t]he powers in question are justifiably assigned to registry managers.” APTLD further commented that “[a]n attempt to centralize this function would prove counterproductive to the well-established practice” and asked for an explanation “as to why it should not be revised to ensure a proper balance of duties and rights of Significantly Interested Parties.”

Section 6.1: Transparency of Decision-Making

The BC supported the language of section 6.1 and agreed “that language in [the] draft agreement appropriately limits redactions [of Board minutes].”

7.2 Performance Monitoring

The CCG commented that the ICANN Bylaws provides for the CSC to monitor PTI’s performance and noted that this is not reflected in the Agreement.

Article VIII: Escalation Mechanisms

The BC commented that Article VIII “generally match the community’s proposal,” but noted that the Root Zone Emergency Process outlined in the community’s proposal is not reflected in this section of the Agreement. The BC suggested that if the Root Zone Emergency Process is part of the Root Zone Maintainer Services Agreement between ICANN and Verisign, that the Process be referenced in Article VIII of the Agreement. Further, the BC commented that given the importance of the escalation processes that the Agreement should “elaborate[s] on what would constitute Remedial Action Procedures.”

The CCG commented that the ICG Proposal stated: “the community should have the ability to require the selection of a new IFO as they relate to names, if necessary after attempting remediation,” but noted that there is no mention of this in the Agreement.

Article IX: Term, Renewal, Transition and Termination

The BC suggested including language in the Agreement describing the impact of the potential Separation recommendations to give context to the terms “IFR Recommendation”, “Special IFR Recommendation”, and “SCWG Recommendation”, and to include “clear, substantive standards for determining if an when separation of the naming functions is appropriate.”

9.4 Survival of Terms

The CCG commented that section 8.1 is not included in the survival of terms list, and noted: “it is important for this clause to survive termination, so that ongoing mediations do not get affected.”

Section 10.1: Resources and Fees

CENTR commented that IANA naming services have always been provided without cost to ccTLDs, but the current wording of Section 10.1 (c) seems to suggest that ICANN can now impose mandatory fees. CENTR suggested a referencing the required ccNSO agreement for any changes to voluntary contributions.

APTLD commented that “fees for ccTLD registries should be defined in consultation with ccTLDs (ccNSO) with a due reference to, and in full consideration of, the outcomes of the discussions held in the course of development of the 2013 Guideline for Voluntary Contributions of ccTLDs to ICANN.”

10.2 Budget

The CCG commented that the ICANN Bylaws “make[s] a reference to two kinds of budgets: an IANA Budget which is to be made by ICANN, and a PTI Budget, to be prepared by PTI” and suggested that the Agreement be amended to reflect these two budgets.

12.1 Confidentiality

The CCG commented that the language in Section 12.1 “may create a conflict with the Transparency provisions in section 6.1” and recommended that “this clause be made subject to Article VI, to ensure that PTI functions in an open and transparent manner.”

14.6 Assignment and Subcontracting

The ISPCP expressed concerns that the Agreement “has no provision for the naming function to contract with outside resources to meet strategic or occasional requirements for stakeholders in the naming community.”

Section 14.7 Governing Law

APTLD commented that the Agreement specified that PTI will be domiciled in the California and that “any and all disputes arising out of or related to this Agreement, shall be governed by, construed, and enforced in all respects in accordance with the Laws of the State of California.” APTLD asked for clarification as to whether PTI may opt for a jurisdiction other than United States of America should “unfavorable circumstances” occur.

Annex A: Statement of Work for Management of the DNS Root Zone

The BC “endorse[d] use of industry best practices and NIST guidelines to maintain and continually improve the stability and security and reliability of operations” and “support[ed] the frequent review of compliance thresholds to maintain appropriate measures as standards and technologies evolve.”

Section IV: Analysis of Comments

General Disclaimer: This section intends to provide an analysis and evaluation of the comments submitted along with explanations regarding the basis for any recommendations provided within the analysis.

General Comments

CENTR noted that the name of the Agreement does not match its reference in the revised ICANN Bylaws and suggested changing the name of the Agreement to “IANA Naming Function Contract” be consistent with the new ICANN Bylaws Section 16.3.

For consistency with the ICANN Bylaws, ICANN will change the name of the Agreement to IANA Naming Function Contract.

The CWG-Stewardship prepared a redline of the Agreement based on a series of calls with its members, input from its external legal counsel, and discussion with ICANN. ICANN thanks the CWG-Stewardship and its external legal counsel for the comments and inputs and as noted during the discussions, ICANN agrees with the edits as reflected in the redline submitted by the CWG-Stewardship and will incorporate them into the final draft of the Agreement.

The ccNSO Council acknowledged the participation and contributions of representatives of the ccTLD community in CWG-Stewardship discussions, and supported the comments made, in particular as it relates to Sections 1.1 and 4.7 of the Agreement.

ICANN confirms that the language of Sections 1.1 and 4.7, as agreed to with the CWG-Stewardship and the representatives of the ccTLD community that participated in CWG-Stewardship discussions, will be reflected in the final draft of the Agreement.

The CCG commented that the ICG Proposal stated that there would be a standing committee that would advise the ICANN Board regarding operational and architectural changes to the root zone; however there is no mention of this committee in the Agreement.

As CCG noted, the standing committee’s primary role is to advise the ICANN Board regarding architectural changes to the root zone. Because this standing committee’s (the Root Zone Evolution Review Committee (RZERC)) obligations are to ICANN, and not to PTI, the Agreement is not an appropriate place to identify the scope and responsibilities of the RZERC. The RZERC Charter, recently [approved](#) by the ICANN Board, reflects the full scope of responsibilities of the RZERC. The RZERC is, however, referenced in the Agreement within the definition of “Interested and Affected Parties,” and because of this inclusion, PTI is required by the Agreement to collaborate with the RZERC, particularly in the performance of the IANA naming services as reflected in Annex A of the Agreement.

4.4 Performance of IANA Naming Function

The CCG commented that the ICG Proposal “takes into account the possibility that performance of the non-names IANA functions may be subcontracted to PTI” and that “[i]n this eventuality, it states that these new agreements cannot override Part 1 (Domain Names) of the ICG Proposal (and by extension, the Agreement).” The CCG further noted that this is

not reflected in the Agreement.

ICANN notes that section 4.4.b of the Agreement states: “Contractor shall treat the IANA Naming Function with equal priority as the other IANA functions performed by Contractor, and process all requests promptly and efficiently.” This language assures that PTI will perform all IANA functions with equal priority.

Section 4.5: Separation of Policy Development and Operational Roles

The BC expressed concerns that “without clear and unequivocal language that limits the PTI to the operational aspects of the IANA functions, there is a risk that the PTI will become a venue to re-litigate upstream policy decisions.” The BC suggested at minimum deleting the language in section 4.5.iii, and preferred deleting language in 4.5.i, 4.5.ii, and 4.5.iii. Further, the BC recommended that the language of section 5.3.b is also reflected in section 4.5 to further emphasize separation of policy and operational roles.

ICANN acknowledges the BC’s concerns and notes that the preamble to the Section 4.5 makes clear that staff performing the IANA Naming Function do not publicly initiate, advance or advocate any policy development related to the IANA Naming Function. The exclusion provided for in Section 4.5.iii is meant to allow PTI staff, who possess specific operational knowledge, to provide insight to inform policy development. To make this clear, the language of 4.5.iii states: “the primary purpose of such publication, contribution or the primary purpose of such publication, contribution or commentary is to supply relevant IANA Naming Function experience and insight.” This language makes clear that PTI staff does not initiate, advance or advocate policy development, but can contribute valuable operational insight to help inform the policy development process. As for the BC’s request for deletion of the exclusions in 4.5.i and 4.5.ii, deletion is not appropriate as 4.5.i allows for PTI staff to respond to requests from Interested and Affected Parties, and 4.5.ii allows for PTI staff to seek guidance when needed in performing the IANA naming services. These are both necessary to the performance of the IANA naming function.

Section 4.6: User Instructions

CENTR suggested that the Agreement should include an obligation for PTI to set up a coordination process with its customers to “define, review and change technical requirements.”

As a result of ICANN’s discussions with the CWG-Stewardship and its external legal counsel during the public comment period, the language of this Section will be changed to: “Contractor shall, in collaboration with its all Interested and Affected Parties, maintain user instructions for the IANA Naming Function, including technical requirements.” This allows PTI to work with the CSC, which represents the customers of the IANA Naming Function, to coordinate the maintenance of the user instructions. The CSC is also included in the definition of “Interested and Affected Parties” that is set out in the Agreement.

Section 4.7: Responsibility and Respect for Stakeholders

CENTR recommended adding to the Agreement a reference to RFC 1591 to the Agreement as it “is the basis for delegation and redelegation of ccTLDs” and supports the text agreed to with the CWG-Stewardship. CENTR further commented that it is important for the Agreement

to make clear that PTI's role "is limited to checking that due process has been followed and documented and that the action in PTI is within the relevant policy framework for the registry concerned." CENTR also noted: "ccTLDs that are not member of the ccNSO cannot be bound by ccNSO agreed policies" and asked for clarification of this in the Agreement as well as a reference to it in the ICANN Bylaws.

APTLD commented that the language in Section 4.7 elevates the GAC Principles to policy status when they have not gone through the policy development process.

During discussions with the CWG-Stewardship and its external legal counsel that took place during the public comment period, ICANN agreed to revised the language in a manner which addresses CENTR's and APTLD's comments on this Section. The revised language agreed upon with the CWG-Stewardship is: "Contractor shall apply the policies for the Root Zone Management component of the IANA Naming Function that have been defined, or after the date of this Agreement are further defined, by (a) the Generic Names Supporting Organization ("GNSO"), as appropriate under ICANN's Bylaws, (b) the Country Code Names Supporting Organization ("ccNSO"), as appropriate under ICANN's Bylaws, and (c) RFC 1591: /Domain Name System Structure and Delegation/ ("RFC 1591") as interpreted by the Framework of Interpretation of Current Policies and Guidelines Pertaining to the Delegation and Redefinition of Country-Code Top Level Domain Names, dated October 2014 ("FOI"). In addition to these policies, Contractor shall, where applicable, consult the 2005 Governmental Advisory Committee Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains ("GAC 2005 ccTLD Principles"). Contractor shall publish documentation pertaining to the implementation of these policies and principles on the IANA Website."

Section 4.9 General Manager; Key Personnel

The ISPCP is concerned that "requiring specific staff with specific skills in specific titles seems to eliminate flexibility for the management of the naming function to meet future needs."

The CCG commented that the CWG-Stewardship Proposal specified "Qualified Programme Manager, IANA Functions Programme Manager, and IANA Function Liaison for Root Zone Management" as key personnel and noted that the Agreement reflects "General Manager, Director of Security, and Conflict of Interest Officer" as key personnel. The CCG further commented that it is not clear how the roles recommended in the CWG-Stewardship Proposal are mapped to the roles in the Agreement. The CCG also commented that the Agreement is silent about the procedure for appointment of key personnel and suggested that the qualifications listed in the PTI Bylaws for Directors be applied to "the appointment of key personnel as well to avoid conflicts of interest."

ICANN notes that this Section is a carry-over of an existing provision in the IANA Functions Contract. The carry-over of this provision is required by the CWG-Stewardship in its proposal. The provision was updated to reflect the current key roles that are in place within the IANA department today and reflective of the key roles called for in the IANA Functions Contract with NTIA. The key personnel as identified in the Agreement includes the appropriate scope of responsibilities. ICANN further notes that the qualifications for Directors specified in the PTI Bylaws are only applicable to Directors. In addition, PTI will have its own [Conflict of Interest policy](#) to which it will adhere.

Section 5.3: Performance Exclusions

CENTR suggested that Section 5.3(a) be clarified to avoid confusion within the current wording, which can be read to suggest that ICANN is assuming the authorization role previously held by NTIA as it relates to root zone management.

APTLD commented that Section 5.3.a “effectively prohibits the Contractor to “...make modifications, additions or deletions to the root zone file or associated information”” and that “[t]he powers in question are justifiably assigned to registry managers.” APTLD further commented that “[a]n attempt to centralize this function would prove counterproductive to the well-established practice” and asked for an explanation “as to why it should not be revised to ensure a proper balance of duties and rights of Significantly Interested Parties.”

As a result of discussions with the CWG-Stewardship and its external legal counsel, which took place during the public comment period, ICANN and the CWG-Stewardship agreed to language that would better reflect the intent that PTI shall not perform the root zone maintainer role unless and until authorized by ICANN.

7.2 Performance Monitoring

The CCG commented that the ICANN Bylaws provides for the CSC to monitor PTI’s performance and noted that this is not reflected in the Agreement.

ICANN notes that 7.2.a states: “So long as the CSC exists pursuant to ICANN’s Bylaws, Contractor acknowledges and agrees that the CSC is entitled to monitor Contractor’s performance under this Agreement (including the SOW) in accordance with ICANN’s Bylaws.”

Article VIII: Escalation Mechanisms

The BC commented that Article VIII “generally match[es] the community’s proposal,” but noted that the Root Zone Emergency Process outlined in the community’s proposal is not reflected in this section of the Agreement. The BC suggested that if the Root Zone Emergency Process is part of the Root Zone Maintainer Services Agreement between ICANN and Verisign, that the Process be referenced in Article VIII of the Agreement. Further, the BC commented that given the importance of the escalation processes that the Agreement should “elaborate[s] on what would constitute Remedial Action Procedures.”

The CCG commented that the ICG proposal states: “the community should have the ability to require the selection of a new IFO as they relate to names, if necessary after attempting remediation,” but noted that there is no mention of this in the Agreement.

The Root Zone Emergency Process is reflected in the Root Zone Maintainer Services Agreement between ICANN and Verisign. Certain parts of ICANN’s obligations under the RZMA, including the Root Zone Emergency Process, will be subcontracted to PTI. Because there will be a separate subcontracting agreement between ICANN and PTI for this work, it is not necessary for any subcontracted process to be reflected in this Agreement.

With regards to the BC’s request for the Remedial Action Procedures to be elaborated, the CWG-Stewardship proposal provides a set of draft procedures, and states that the procedures shall be finalized between the CSC and PTI. As such, Section 8.2 of the

Agreement states: “Following the Effective Date, Contractor shall work cooperatively with the CSC to develop “Remedial Action Procedures” for the purpose of addressing Performance Issues.” With regards to CCG’s comment, the CWG-Stewardship proposal specified an escalation path that could lead to a Separation Community Working Group review and potential recommendation for separation. That process is appropriately reflected in the ICANN Bylaws. The Agreement requires that PTI abide by the decisions of the IFRT and SCWG.

Article IX: Term, Renewal, Transition and Termination

The BC suggested including language in the Agreement describing the impact of the potential Separation recommendations to give context to the terms “IFR Recommendation”, “Special IFR Recommendation”, and “SCWG Recommendation”, and to include “clear, substantive standards for determining if an when separation of the naming functions is appropriate.”

ICANN notes that Section 9.2 refers to the ICANN Bylaws for the definition of these terms. As these are ICANN processes, the descriptions are appropriately reflected in the ICANN Bylaws and do not need to be restated in full in the Agreement. Describing the processes in multiple documents could lead to different interpretations.

9.4 Survival of Terms

The CCG commented that section 8.1 is not included in the survival of terms list and noted: “it is important for this clause to survive termination, so that ongoing mediations do not get affected.”

As it is not possible to envision all of the different scenarios under which separation could occur and therefore what obligations ICANN would continue to bear at time of separation, Section 8.1 should not be included in the survival of terms, but instead be dealt with as part of the SCWG’s recommendations for separation. Further, if PTI is removed from performance of the IANA Naming Function (resulting in a termination of the Agreement) and a new operator is put in place, there would be no need to continue mediating how PTI’s customer service complaint should be remediated.

Section 10.1: Resources and Fees

CENTR commented that IANA naming services have always been provided without cost to ccTLDs, but the current wording of Section 10.1 (c) seems to suggest that ICANN can now impose mandatory fees. CENTR suggested a referencing the required ccNSO agreement for any changes to voluntary contributions.

The APTLD commented that “fees for ccTLD registries should be defined in consultation with ccTLDs (ccNSO) with a due reference to, and in full consideration of, the outcomes of the discussions held in the course of development of the 2013 Guideline for Voluntary Contributions of ccTLDs to ICANN.”

ICANN notes that Section 10.1 continues the longstanding limitation from the IANA Functions Contract with NTIA that, in the event there is a determination that fees will be charged for the performance of the IANA functions, those fees must be based on the actual costs incurred. This concept is carried over from B.2 of the current IANA Functions Contract, and was contemplated in Annex S of the CWG Proposal. This limitation on fees is also included in the

ICANN Bylaws at 16.3(a)(vi), which identifies that the fee provision in the Agreement is material and cannot be modified if a majority of the ccNSO Council and GNSO Council reject such a modification.

10.2 Budget

The CCG commented that the ICANN Bylaws “make[s] a reference to two kinds of budgets: an IANA Budget which is to be made by ICANN, and a PTI Budget, to be prepared by PTI” and suggested that the Agreement be amended to reflect these two budgets.

The ICANN Bylaws makes reference to an IANA and PTI budget because the ICANN budgeting and planning process includes two steps, budgeting for the IANA department within ICANN, which then informs the creation of the PTI Budget. The Agreement appropriately reflects the required element, the PTI Budget, and not the budgeting process that includes the creation of the IANA department budget.

12.1 Confidentiality

The CCG commented that the language in Section 12.1 “may create a conflict with the Transparency provisions in section 6.1” and recommends that “this clause be made subject to Article VI, to ensure that PTI functions in an open and transparent manner.”

As ICANN worked through with the CWG-Stewardship and its external legal counsel, the Agreement now reflects that PTI assumes the same transparency obligations that are imposed on ICANN. As a result, neither ICANN nor PTI can use Section 12.1 to ignore any appropriate transparency requirements, including those set out at Section 6.1. The revisions to the Agreement create the appropriate balance of the concerns raised in the CCG comment.

14.6 Assignment and Subcontracting

The ISPCP expressed concerns that the Agreement “has no provision for the naming function to contract with outside resources to meet strategic or occasional requirements for stakeholders in the naming community.”

Section 14.6 only prohibits subcontracting of PTI’s rights and obligations under the Agreement. It does not prohibit PTI from contracting as appropriate for professional services needed.

Section 14.7 Governing Law

APTLD commented that the Agreement specifies that PTI will be domiciled in California and that “any and all disputes arising out of or related to this Agreement, shall be governed by, construed, and enforced in all respects in accordance with the Laws of the State of California.” APTLD asked for clarification as to whether PTI may opt for a jurisdiction other than United States of America should “unfavorable circumstances” occur.

As PTI is domiciled in California per the recommendations of the CWG-Stewardship proposal, and ICANN is domiciled in California per its Bylaws, the Agreement is governed by California law. As both parties to the Agreement are domiciled in California and a California court would be most knowledgeable about the laws governing the Agreement, it’s unlikely that a different

jurisdiction would be sought for legal matters relating to the Agreement.